

1 about.

2 Q And you don't know the nature of  
3 CSN's relationship with ACC basketball?

4 A Today? No, I don't.

5 Q And you don't know whether it's an  
6 exclusive or a non-exclusive relationship;  
7 correct?

8 A No.

9 Q You don't know what ACC games were  
10 actually telecast by Comcast Mid-Atlantic this  
11 past season; correct?

12 A Which games specifically? No. I  
13 know they had a Sunday night game of the week.  
14 Beyond that I don't recall what their specific  
15 schedule was.

16 Q And you don't know how much HTS  
17 paid for the rights to ACC games when you were  
18 employed at HTS?

19 A No, I don't.

20 Q And you don't know what CSN MA  
21 pays for ACC games today?

22 A No, I don't.

1           Q       And you are not aware of what ACC  
2 programming is show on Comcast Sports Net Mid-  
3 Atlantic?

4           A       Today?

5           Q       Correct.

6           A       I know some. I don't know the  
7 specific details of the schedules.

8           Q       You don't know how many ACC  
9 basketball games are shown on Comcast Sports  
10 Net Mid-Atlantic?

11          A       I said I think there is a Sunday  
12 night game of the week, and beyond that I  
13 don't know.

14          Q       And you don't know what the  
15 ratings for those games are?

16          A       No.

17          Q       And you don't have any idea how  
18 much ACC programming costs for CSN MA?

19          A       No.

20          Q       And you can't remember the number  
21 of games that ACC had that were televised by  
22 HTS in the 1989 to 1993 time period?

1           A       I don't recall.

2           Q       So ACC games were so important  
3   that you can't recall even a rough range of  
4   the number of games telecast, correct?

5           A       We didn't get distribution in the  
6   time frame you are talking about. By '93 we  
7   still didn't have distribution down there.

8           Q       Oh.

9           A       It came as the programming built  
10   up.

11          Q       Okay, let's get this record clear.  
12   So in HTS when you were at HTS it had no ACC  
13   basketball games, correct?

14          A       No, we had the ones I described a  
15   moment ago, the CAA, which was gaining some  
16   traction and getting us some publicity in the  
17   Roanoke area.

18          Q       But you don't know how many games  
19   that was?

20          A       I don't recall.

21          Q       Okay, and would you agree that ACC  
22   conference games are the most important games?

1           A       Most -- they are more valuable  
2   than non-conference games, yes.

3           Q       And they are more valuable because  
4   consumers view the conference games as more  
5   important, correct?

6           A       Yes.

7           Q       How many ACC conference games did  
8   CSN MA telecast in 2008-2009?

9           A       I don't know exactly.

10          Q       Do you know which teams were  
11   telecast by CSN MA in 2008-2009?

12          A       Members of the ACC, Maryland,  
13   Virginia, Virginia Tech, North Carolina; but  
14   specific games, no, I don't have a schedule  
15   here to review.

16          Q       Okay, do you know which Virginia  
17   teams specifically?

18          A       The two Virginia schools that are  
19   in the ACC are Virginia and Virginia Tech.  
20   Were those specific teams in specific games?  
21   I don't know; I don't have a schedule to  
22   review.

1           Q       Now, Mr. Ortman, in paragraph 18  
2   of your written direct testimony you said,  
3   quote: For example between 1984 and 1986 and  
4   again between 1989 and 1992 I was responsible  
5   for selling HTS to cable systems throughout  
6   the Orioles television territory, but was  
7   unable to sell the network with Orioles  
8   programming in southwestern Virginia until HTS  
9   obtained the rights to ACC programming.

10          A       Some ACC programming; that's  
11   correct.

12          Q       Your testimony today, sir, was  
13   that HTS had not acquired ACC basketball  
14   games; correct?

15          A       Conference games.

16          Q       And your testimony today was that  
17   HTS had not acquired ACC football games;  
18   correct?

19          A       Correct.

20          Q       So is it your testimony that the  
21   carriage decisions were this shoulder  
22   programming for ACC and that's why cable

1 companies were buying HTS? Is that your  
2 testimony today?

3 A It was helping us get distribution  
4 in parts of western Virginia over that period  
5 of time and into the '90s.

6 Q Which operators picked up HTS as a  
7 result of that ACC shoulder programming?

8 A I don't recall specific operators  
9 at the time. Because it all eventually --  
10 eventually became Adelphia. But it was a  
11 scattered group of independents. I don't  
12 remember.

13 Q Can you name one, sir?

14 A Booth Communications.

15 Q Booth Communications acquired HTS  
16 because of ACC shoulder programming?

17 A They took HTS specifically -- I  
18 don't remember the details of what it was that  
19 got us on.

20 Q Is it your testimony that Booth  
21 Communications acquired HTS because of ACC  
22 shoulder programming; is that your testimony

1 today?

2 A I don't know what Booth  
3 Communications' motive was. I know when I was  
4 selling them at the time, and promoting all  
5 the different products we had.

6 Q Can you name another, any other  
7 cable operator, that bought HTS and put it on  
8 its system because of ACC shoulder  
9 programming?

10 A It's been too long for me to  
11 remember specifically. There were many  
12 independent operators in that part of the  
13 state.

14 Q But you can't name one that bought  
15 HTS because of ACC shoulder programming?

16 A I don't recall the names of the  
17 operators at this point.

18 JUDGE SIPPEL: Can you tell me  
19 what shoulder programming is?

20 THE WITNESS: Shoulder  
21 programming is non-game programming, like  
22 coaches' shows or highlight shows or talk

1 shows; but not games.

2 JUDGE SIPPEL: Thank you. I  
3 never heard that before.

4 MR. FREDERICK: Your Honor, just  
5 out of courtesy to Mr. Ortman, we have been  
6 going for some time. Would you like to take  
7 a short break?

8 JUDGE SIPPEL: No, ask him.

9 THE WITNESS: I'm okay.

10 JUDGE SIPPEL: He's good.

11 THE WITNESS: All right.

12 JUDGE SIPPEL: Is the reporter  
13 all right? You want to take a break? Let's  
14 take a break.

15 We'll be back -- do you have much  
16 more to go?

17 MR. FREDERICK: I have a few  
18 topics left to go, Your Honor.

19 JUDGE SIPPEL: All right. We'll  
20 still come back between 10 and 15 minutes.

21 MR. FREDERICK: Okay, thank you.

22 (Whereupon at 4:03 p.m. the



1 proceeding in the above-entitled  
2 matter went off the record to  
3 return on the record at 4:25 p.m.)  
4 JUDGE SIPPEL: We're on the  
5 record.

6 MR. FREDERICK: Thank you, Your  
7 Honor.

8 JUDGE SIPPEL: Sure.

9 MR. FREDERICK: I just have a  
10 couple of questions about the paperwork  
11 involved when Comcast decides not to carry a  
12 programming network. Okay.

13 BY MR. FREDERICK:

14 Q When Comcast decides not to carry  
15 a programming network, there's no written  
16 process for recording that decision. Correct?

17 A Not necessarily. If it was  
18 initiated, and then stopped somewhere along  
19 the line for any reason, then there would be  
20 a written record of the decision not to do it.

21 Q But there's not a formal written  
22 process involved when Comcast decides not to

1 carry a network?

2 A Other than what I've described,  
3 no.

4 Q And what you described would be a  
5 series of ad hoc emails?

6 A No. It could even be a CCR that -  
7 - Channel Change Request, which is a document  
8 that the field might initiate that along the  
9 way it might be stopped for one reason or  
10 another.

11 Q Okay. But there was no  
12 documentation of the process for creating  
13 Schedule A. Correct?

14 A I don't know that.

15 Q Okay. And there was no process  
16 for creating a writing to record why the  
17 systems were left off of Schedule A. Correct?

18 A I don't know that. There may have  
19 been. I haven't seen -- in preparation for  
20 today, I haven't seen any documents, but I  
21 don't know that.

22 Q Neither have we, Mr. Ortman. I

1 just want to confirm for the record that there  
2 are no more documents that were not obtained  
3 and produced in this litigation.

4 A Not to my knowledge.

5 Q But you're not aware of any  
6 process by which Comcast would write down the  
7 reasons why it would not carry a programming  
8 network.

9 A No, I know of no process like  
10 that.

11 Q All right. And I believe you  
12 think that's unnecessary paperwork.

13 A Correct.

14 Q Okay. Now, I want to ask about  
15 the negotiations in August of 2006 over the  
16 MASN carriage agreement.

17 A Okay.

18 Q You helped Jen Gaiski prepare  
19 Schedule A to the term sheet during the July-  
20 August 2006 time frame.

21 A Yes, I did.

22 Q And you, and Jen, and Matt Bond

1 were the three people that were responsible  
2 for Schedule A?

3 A I don't know that Matt was  
4 directly involved. I communicated with Jen  
5 Gaiski, and perhaps other members of her team.

6 Q Okay. Did you communicate with  
7 anyone other than Jen Gaiski and her team over  
8 Schedule A?

9 A I don't believe so.

10 Q Okay. So, you didn't talk to any  
11 of the marketing people in the field in  
12 creating Schedule A.

13 A I may have, sizing up interest,  
14 but I don't recall.

15 Q But sitting here today, you can't  
16 recall a single person.

17 A I don't recall.

18 Q Okay. And you had no face-to-face  
19 meetings with Comcast personnel at that time.  
20 Correct?

21 A Not that I recall.

22 Q And you sought to carve off

1 systems on the periphery, I think was your  
2 testimony. Correct?

3 A I sought to limit the obligation,  
4 I think was my testimony.

5 Q Okay. You used three steps to  
6 decide whether to include a system to carry  
7 MASN. Correct?

8 A Yes.

9 Q The first step was to look at the  
10 recent history of carrying Orioles on CSNMA.  
11 Correct?

12 A Orioles, yes.

13 Q The second step was to look at the  
14 capacity of the cable systems. Correct?

15 A Correct.

16 Q And the third step was that you  
17 wanted to confine MASN to the Baltimore-  
18 Washington DMAs. Correct?

19 A Confine the obligation to the  
20 Baltimore-Washington DMA.

21 Q And you wanted the discretion,  
22 unless there was extreme pressure to launch

1 MASN. Correct?

2 A I don't recall using those words.

3 MR. KIRK: Objection.

4 Mischaracterizes his testimony.

5 MR. FREDERICK: That's okay.

6 JUDGE SIPPEL: It's been  
7 withdrawn.

8 MR. FREDERICK: Your Honor, may I  
9 approach the witness?

10 JUDGE SIPPEL: You may. This is  
11 MASN 106. Is that in the record?

12 MR. FREDERICK: Yes, it is, Your  
13 Honor.

14 JUDGE SIPPEL: Thank you.

15 BY MR. FREDERICK:

16 Q Mr. Ortman, have you seen this  
17 document before?

18 A I have.

19 Q And I'd like to ask you about the  
20 middle part of the first page of this  
21 document. Just for the record, would you read  
22 the part that begins, "Ortman says".

1 A [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED]

10 Q Okay. Is that a correct  
11 characterization of your views at that time?

12 A This is an email from Jen Gaiski.  
13 These are her words, not mine.

14 JUDGE SIPPEL: That wasn't the  
15 question.

16 THE WITNESS: But the general -

17 JUDGE SIPPEL: Go ahead. Ask the  
18 question again.

19 BY MR. FREDERICK:

20 Q I said, was that an accurate  
21 characterization of your views at the time?

22 A [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 JUDGE SIPPEL: Can you answer his  
4 question first yes or no, and then if you want  
5 to explain?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: It was. That's a  
8 fair representation.

9 THE WITNESS: Yes, that's true.

10 BY MR. FREDERICK:

11 Q Okay. So it's fair that your view

12 [REDACTED]

13 to launch MASN in those areas that were not  
14 going to be launched.

15 A Again, those were her words, not  
16 mine.

17 Q Well, I'm asking you, sir, was  
18 that your characterization of the situation.

19 A I don't know what she meant by

20 [REDACTED] I never -

21 Q Sir, I'm asking you what your view  
22 was. Ms. Gaiski has characterized your view



1 as there needing [REDACTED] [REDACTED] [REDACTED] to  
2 launch MASN in the unlaunched area. Was that  
3 your view?

4 A May I explain my view?

5 JUDGE SIPPEL: Well, can you  
6 answer that, was that your view, yes or no?

7 THE WITNESS: It's the words  
8 [REDACTED], Your Honor, that I'm having  
9 trouble with, because I don't -

10 JUDGE SIPPEL: You never accepted

11 [REDACTED].

12 THE WITNESS: I don't accept those  
13 words.

14 JUDGE SIPPEL: All right. Go  
15 ahead.

16 THE WITNESS: My view would have  
17 been that if we felt consumer pressure, but in  
18 the way of subscriber loses, then we would  
19 respond accordingly. [REDACTED]

20 [REDACTED].

21 BY MR. FREDERICK:

22 Q Did Jen Gaiski say there should be

1 [REDACTED] to determine whether  
2 MASN should be launched in the unlaunched  
3 systems?

4 A Not that I recall.

5 Q Did Matt Bond tell you that  
6 extreme pressure would be an appropriate  
7 standard for determining the discretion by  
8 which Comcast would launch?

9 A Not that I recall.

10 Q Did any other Comcast executive  
11 tell you that [REDACTED] would  
12 be an inappropriate standard for deciding  
13 whether to launch MASN in the unlaunched  
14 systems?

15 A Again, I'm uncomfortable with  
16 these words [REDACTED]. I don't know  
17 what that means. The litmus test that I clung  
18 to, and others understood, was would we lose  
19 subscribers to the competition by not having  
20 it.

21 Q Would you agree with me that a  
22 hunting license [REDACTED] is a

1 different standard than a hunting license

2 [REDACTED]?

3 A [REDACTED]

4 [REDACTED]

5 [REDACTED].

6 Q Okay. Would you agree with me  
7 that the words [REDACTED] would mean  
8 something?

9 A Perhaps. It needs more adjectives  
10 around it. [REDACTED]

11 Q [REDACTED] Is that  
12 the adjective that you're searching for, Mr.  
13 Ortman?

14 A Subscriber pressure, subscriber  
15 loses.

16 Q Okay. [REDACTED]  
17 [REDACTED] Is that correct?

18 A Correct. Subscriber behavior,  
19 yes.

20 Q Okay. [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]

2 A [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q Could you answer my question, sir?

6 A You keep using the same words,  
7 that I don't understand what that mean, so I  
8 don't know how to answer your question.

9 Q Okay. You have no idea of what  
10 the words [REDACTED] mean.

11 A Not in this context.

12 Q Okay. Do you know what the word  
13 [REDACTED] means?

14 A Yes.

15 Q Okay. Do you know what the word  
16 [REDACTED] means?

17 A Yes.

18 Q What does the word [REDACTED]

19 A [REDACTED]

20 Q [REDACTED]

21 [REDACTED]n?

22 A Someone [REDACTED] -

1 [REDACTED]

2 [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 Q Okay.

5 A [REDACTED]

6 [REDACTED]

7 Q Okay. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A [REDACTED]

11 [REDACTED]

12 Q Okay.

13 A Is that -

14 Q All right. A lot of customers  
15 going to the opposition, or to the competitor.

16 A Yes.

17 Q I just want to get nomenclature  
18 that we agree on.

19 A That's what I would accept her  
20 characterize to mean had she used those words.

21 Q And my question to you is, are you  
22 aware of Comcast ever applying [REDACTED]

1 [REDACTED]?

2 MR. KIRK: Objection, Your Honor.

3 We've just gone through that he doesn't know

4 [REDACTED].

5 JUDGE SIPPEL: Sustained.

6 BY MR. FREDERICK:

7 Q [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 A Yes.

12 Q Are you -

13 JUDGE SIPPEL: Explain the  
14 context. I mean, explain exactly what you  
15 mean by that.

16 THE WITNESS: When we dropped  
17 CSNMA in Kent County, Delaware, for example,  
18 to make room for MASN, I was prepared, our  
19 region was prepared -- they were concerned  
20 about that move, that we might lose  
21 subscribers because of it, because our  
22 competition had CSNMA, and we did not in that

1 county. So, if they suddenly felt significant  
2 subscriber loses because of the loss of CSNMA  
3 in that county, we would have had latitude, I  
4 would have hoped, to put it back on, if we  
5 could afford the bandwidth.

6 JUDGE SIPPEL: That would have  
7 been the [REDACTED] you're talking about.  
8 Right?

9 THE WITNESS: The subscriber  
10 loses, exactly.

11 JUDGE SIPPEL: Yes. Right.

12 MR. FREDERICK: We'll get to Kent  
13 County in due time, Mr. Ortman.

14 BY MR. FREDERICK:

15 Q You didn't actually do a survey of  
16 your field folks before Schedule A was put  
17 together. Is that correct?

18 A I felt I had -- no, it is correct,  
19 because I felt we had time until next April  
20 when I would be able to gauge better what the  
21 demand was going to be.

22 Q And on the first step, legacy

1 carriage -

2 A Right.

3 Q -- Comcast Cable was interested in  
4 whether CSNMA had a history of carriage.  
5 Correct?

6 A Orioles Baseball history of  
7 carriage, which happened to be CSNMA, yes.

8 Q And that was important to you  
9 because you wanted to exclude from the  
10 conversation introducing MASN where CSNMA had  
11 not been. Correct?

12 A That's correct, as a means to  
13 control costs.

14 Q Comcast was interested in knowing  
15 what systems would have the possibility of  
16 losing Orioles Baseball for the 2007 season.  
17 Correct?

18 A I was interested in that, yes.

19 Q And you were very concerned about  
20 knowing where the Orioles had been in the  
21 recent history versus the future. Correct?

22 A That's correct.



1           Q       But you didn't actually look at  
2       where CSNMA was carrying Orioles games prior  
3       to 2006, did you?

4           A       Prior to 2006? I don't understand  
5       your question. Yes, wherever CSNMA had been,  
6       we looked at that. That was criteria number  
7       one.

8           Q       You actually looked at the list of  
9       systems where CSNMA was carried prior to 2006.  
10      Is that your testimony?

11          A       Did I look at that list? No, I do  
12      that list.

13          Q       Okay. Now, looking -- we  
14      introduced the very first exhibit that we  
15      talked about was from Mr. Orszag's expert  
16      report, was it not?

17          A       Yes.

18          Q       Is it your testimony today that  
19      you looked at every single system on that list  
20      that carried CSNMA before deciding whether to  
21      put MASN on the launch list?

22          A       Did I look at Mr. Orszag's list?